IN THE

Supreme Court of the United States

October Term,

No. 77-558

GEORGE GREVAS,
Petitioner,

v

M/V OLYMPIC PEGASUS, her engines, boilers, boats, tackle, apparel, machinery, etc., in rem,

and

SOMERSET NAVIGATION CO., in personam,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

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No.

GEORGE GREVAS,

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v.

M/V OLYMPIC PEGASUS, her engines, boilers, boats, tackle, apparel, machinery, etc., in rem,

and

SOMERSET NAVIGATION CO., in personam,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment and

denial for a re-hearing and re-hearing en banc of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit, together with its denial for a re-hearing and re-hearing en banc, is reported at 557 F.2d 65 (1977), and is reproduced in the Appendix to this Petition, at pages 1 - 11.

This case was commenced in the Federal District Court for the Eastern District, Norfolk Division, where the Respondents' motion to quash service of process was granted. (App. 13 - 34).

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on June 7, 1977, and on August 5, 1977, the request for re-hearing and re-hearing en banc was denied with Circuit

Judge Widener, dissenting. Jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

QUESTION PRESENTED

Whether, within the limitations of the due process clause of the Fourteenth Amendment of the United States Constitution, the Respondent, by its activities and relationship with the forum, has rendered itself amenable to jurisdiction and subject to service of process pursuant to Section 8-60 of the Code of Virginia, as amended.

STATUTE INVOLVED

Section 1 of the Fourteenth Amendment of the United States Constitution, U.S.C. Constitutional Amendment 14, Section 1, provides in part:

> ". . . nor shall any state deprive any person of life, liberty, or property, without due process of law; . . . "

Title VIII, Section 60, of the Code of Virginia, as amended, provides in part:

> "If a foreign corporation doing business in this State or a foreign corporation transacting affairs in this State has no registered agent in this State, process or notice may be served on . . . the Clerk of the State Corporation Commission. . . ."
> (Set forth in full at App. 35)

STATEMENT

The Petitioner, George Grevas, a merchant seaman of Greek nationality, on March 3, 1976, signed an enlistment agreement in Piraus, Greece, to perform services aboard the OLYMPIC PEGASUS, and joined the vessel in Augusta, Italy, on March 4, 1976. The owner of the vessel was Somerset Navigation Company, Panama, S.A., a Panamanian corporation, sailing under the Liberian flag. The only business office maintained by Somerset is located at Montevideo, Uruguay. All accounts receiveable and payable are

made on behalf of the Respondent by an agent, Olympic Maritime, S.A., at Monte Carlo, Monaco.

None of the stockholders or officers of the Respondent are citizens or resident aliens of the United States. There are eight directors; five of Greek nationality, two of Uruguanian nationality, and one of Argentinian nationality. All of the shares of the Respondent are owned by a Panamanian corporation, the control of which is unknown.

The OLYMPIC PEGASUS was the only vessel owned, operated or chartered by the Respondent, and at the time of the injury was under a time charter to Sovfracht, as agents for the Union of Soviet Socialist Republics.

Early in March, the vessel left Odessa, U.S.S.R., and on March 5, 1976, while at sea, received word to change course and head toward the east coast of the United States.

On March 16, 1976, while the vessel was at sea heading for the United States, it received specific orders to proceed to Norfolk, Virginia, to load cargo.

On March 17, 1976, at about 9:30 a.m. of that day, the Petitioner was ordered to go on deck and secure barrels containing acid which had been secured by rope and had become loose. While on deck, one of the containers which was loose fell, breaking and spilling acid all over the deck, causing the Petitioner to slip and fall into the acid, sustaining severe burns to the eyes, stomach, hands, arms and legs. The Petitioner has been informed by physicians upon his return to Greece that he has lost the sight of his right eye and a substantial portion of the sight of his left eye.

The vessel continued on its course from March 17, 1976, until March 20, 1976, when

it ended its sea passage and proceeded to the Norfolk Pilot Station.

The vessel remained in Norfolk, Virginia, between March 20 and March 28, 1976. Prior to departing from Norfolk, Virginia, the vessel loaded, over a three-day period, 24,513.272 long tons of soybean (53,928,600 pounds) for a value in excess of $4,500,000.00.

In addition, while in Norfolk, the vessel was assisted in and out of anchorage, took on 225 long tons of water for consumption aboard the vessel, was inspected by immigration and customs officials and by an insurance representative of the defendant. In addition, its propeller was inspected for repairs and thirteen members of the crew were sent ashore for medical examinations. Also, a new member of the crew was signed aboard.

The Petitioner remained in Norfolk, Virginia, from March 20, 1976, until on

or about June 18, 1976, when he was returned to Greece, a period of nearly three months. On March 20, 1976, he was admitted to the United States Public Health Service Hospital in Norfolk, Virginia, and remained under treatment until June 15, 1976. During this time, in addition to receiving extensive medical assistance at the United States Public Health Service Hospital, the Petitioner was also examined by a private opthalmologist and physicians on behalf of the Respondent.

Prior to his return to Greece, the Petitioner retained counsel, an action was instituted and extensive depositions were taken.

Suit was instituted in the United States District Court for the Eastern District of Virginia, Norfolk Division, on April 22, 1976.

Purported service of process was made on the Respondent, pursuant to Rule 4 of the Federal Rules of Civil Procedure, in accordance with §8-60 of the Code of Virginia, as amended, through the State Corporation Commission of the Commonwealth of Virginia, on or about June 10, 1976.

The Respondent appeared specially by counsel and filed a motion to quash service of process and plea to the jurisdiction on or about June 18, 1976. On September 13, 1976, the District Court, in a memorandum opinion, concluded that the Respondent's contact with the State of Virginia was not "fairly extensive" and therefore not sufficient to sustain service of process under §8-60 of the Code of Virginia.

On September 21, 1976, the Petitioner filed a motion for reargument of the issues determined by the order of the District Court. The Court denied this motion.

The Court of Appeals affirmed the judgment of the District Court and denied the petition for re-hearing and re-hearing en banc. (App. 11 - 13).

REASONS FOR GRANTING THE PETITION

This Petition involves a substantial question concerning the application of the due process clause of the Fourteenth Amendment to the scope of the jurisdiction permitted of a corporation doing business within the forum.

The Respondent, Somerset Navigation Co., was served with process pursuant to Section 8-60 of the Code of Virignia, as amended, which the Circuit Court of Appeals has acknowledged, has extended jurisdiction to the limits allowed by the due process clause of the Fourteenth Amendment. Moore-McCormack Lines, Inc. v. Bunge Corp., 307 F.2d 910 (4th Cir. 1962)

Travelers Health Assoc. v. Commonwealth, 188 Va. 877, 51 S.E.2d 263 (1949) Aff'd. 339 U.S. 643, 70 S.Ct. 927, 94 L.Ed. 1154 (1950); Grevas v. M/V OLYMPIC PEGASUS, 557 F.2d 65 (4th Cir. 1977).

The Circuit Court, in attempting to define the boundaries of due process, has incorrectly interpreted and applied the law as it now exists, creating a severely restrictive criterion inconsistent with the decisions of this Court, imposing an unnecessary and unreasonable burden upon the Petitioner in the pursuit of a forum.

The controlling standard is the constitutional test of "minimum contacts", promulgated in International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945), and refined in the subsequent decisions McGee v. International Life Insurance Co., 355 U.S. 220, 78 S.Ct. 199, 2 L.Ed.2d 223 (1957); Hanson v. Denckla, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958).

The Court, in International Shoe Co. v. Washington, supra, was careful to point out that in applying this test it was not to be a merely mechanical or quantative test, stating:

> "Whether due process is satisfied must depend upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. That clause does not contemplate that a state may make binding a judgment in personam against an individual or corporative defendant with which the state has no contacts, ties or relations." (326 U.S. 319, 66 S.Ct. 160).

In McGee v. International Life Insurance Co., supra, the single act of the defendant delivering an insurance policy in the jurisdiction when the circumstances surrounding the contract had connections with the state, was sufficient for due process purposes.

In Hanson v. Denckla, supra,[1] the Court recognized that the unilateral activity of one seeking jurisdiction of the defendant is not sufficient to satisfy the jurisdictional requirements, but that:

> ". . . it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protection of its law . . . " (357 U.S. 253, 78 S.Ct. 1240).

A combined reading of International Shoe Co., McGee and Hanson appears to establish the requirement that the non-resident defendant must do some act or consummate some transaction within the forum. Once the affirmative act is established, it is necessary to review the

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1/ Notwithstanding the fact that the plaintiff was a non-resident and the cause of action arose outside the forum, the Court followed International Shoe Co. v. Washington, supra, imposing no greater burden in the satisfaction of due process.

contacts among the forum state, the defendant and the litigation to determine whether the acceptance of jurisdiction is consistent with the due process tenents of "fair play" and "substantial justice."

The latest decision of this Court, Shaffer v. Heitner, _____ U.S. _____, 97 S.Ct. 2469 (1977), while primarily ruling that in rem jurisdiction is subject to the same standards as applied to in personam jurisdiction, it is clearly applicable to our case as it sets forth the necessary criterion determining the extent of due process.

It is imperative that we recognize that the Court, in Shaffer v. Heitner, supra, while acknowledging that the plaintiff was a non-resident and the cause of action arose outside the jurisdiction as in our case, adhered to the same criterion previously formulated by this Court in determining the extent of due process, making no distinction and imposing no greater

requirement to assume jurisdiction.

The decision of the Court in Shaffer v. Heitner, supra, relied heavily upon Hanson v. Denckla in determining the extent of due process, seeking to find that there "be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protection of its laws" and that there be "contacts among the forum state, the defendant, and the litigation."

The Circuit Court below has, from a series of cases culminating in the case now before this Court, evolved a rule inconsistent with the decisions of this Court. Each aspect of that rule and its applicability to the facts of our case are set forth below:

1) where the plaintiff is a stranger to the forum state;

a. It can only be assumed that the Circuit Court considers a party a stranger to the forum if at the time of the accident he has no contact even if he subsequently and as an integral part of the cause of action becomes substantially involved with the jurisdiction. Petitioner was taken by Respondent to the forum where he was hospitalized and received extensive medical care for three months, including examinations by Respondent's physicians.

2) the injuries did not occur in the state or are unrelated to the corporation's activities in the state; and

b. The OLYMPIC PEGASUS was the Respondent's only vessel and therefore its only commercial enterprise. While the cause of action arose on the high seas, it was under orders and engaged at the time of the accident in proceeding to Norfolk, Virginia, to receive a substantial cargo. Its activities at the time of the accident were not unrelated to the forum.

3) the contacts between the corporation and the forum state must be "fairly substantial" before in personam jurisdiction over the corporation may be imposed without offending the notions of fairness and justice inherent to due process. Ratliff

v. Cooper Laboratories, Inc., 444 F.2d 745, 748 (4th Cir. 1971); Lee v. Walworth Valve Co., 482 F.2d 297, 299-300 (4th Cir. 1973); Grevas v. M/V OLYMPIC PEGASUS, 557 F.2d 65, 58 (4th Cir. 1977).

> c. The contacts of the Respondent to the forum are substantial in that its entire corporate activity became inextricably tied to Virginia from March 20, 1976, to March 28, 1976, and the vessel loaded a cargo having a value in excess of $4,500,000.00; was assisted in and out of anchorage; took on water; was inspected by immigration and customs officials and an insurance representative; had its propeller inspected; sent some crew members ashore for medical examinations and signed on one new crew member.

The test of the Circuit Court requiring "substantial contacts" was originally applied to defeat a plaintiff from utilizing the Court where he had no contact with the forum except where he had engaged in forum shopping. The rule was reiterated in subsequent cases and was adopted in the case now before this Court, a case clearly not involving forum shopping. In applying

the mechanical test of "substantial contacts" the Court below is imposing a standard clearly inconsistent with the decision of this Court in Shaffer v. Heitner, supra, which did not require any greater contact of the defendant with the jurisdiction because he was a non-resident and the cause of action arose outside the jurisdiction, but merely held that once a defendant voluntarily associated itself with the jurisdiction, the sufficiency of the contact in relationship with the defendant, the forum and the litigation was to be reviewed as to its relevancy.

The activities conducted by the Respondent in the forum were of such a substantial nature that it clearly demonstrates that it "voluntarily associated" itself with the State of Virginia, "invoking the benefits and protection of its laws."

The Court, in Shaffer v. Heitner, supra, in dealing with the elements to be considered in defining the "contacts among the

forum state, the defendant and the litigation" suggested that attention be given to the following:

1) the likelihood that records and witnesses will be found in the state (page 2582);

> a. All of the hospital records and treating physicians are located within the jurisdiction, including those physicians employed by the Respondent in the defense of this action. De bene esse depositions of the Petitioner have been completed and all of the records of the vessel are in the language of the forum.

2) the interest of the state in the action (page 2582);

> b. The state has a compelling interest in the Petitioner as historically, the state has treated seamen of all nationalities as wards of the Court. The economic impact upon the state conducting business in excess of $4,500,000.00 is a significant one in which the state has an interest. Arguelles v. U.S. Bulk Carriers, Inc., 408 F.2d 1065, certiorari granted 90 S.Ct. 2163, 398 U.S. 957, 26 L.Ed2d 541, aff'd. 91 S.Ct. 409, 400 U.S. 351, 27 L.Ed2d 456; Jernigan v. Lay Barge Delta Five, 296 F.Supp. 127, aff'd. 423 F.2d 1327.

3) the availability of another forum (Note 37, page 2584); and

> c. In light of the Respondent's elusive contacts with other jurisdictions, there can be no assurance that any other forum is available to the Petitioner. The availability of a forum also implies the availability of an adequate remedy. The benefits afforded a Greek seaman under Greek law ceases after four months.

4) the extent of any hardship upon the defendant by having the defendant defend in the forum state (page 2586).

> d. The Respondent is an international corporation with minimum contacts with numerous jurisdictions throughout the world, and having insignificant contact with Greece. The extent of the contact with Virginia during the period the vessel was here is substantially more than any economic activity conducted in Greece. Since there is no center from which the Respondent conducts its activities, it would not be a hardship to require it to be answerable in Virginia, where it conducted extensive economic activites.

An examination of these requirements to our case reveals that the Circuit Court below adopted a mechanical formula of

"substantial contacts" which is inconsistent with the decision of this Court which has achieved a delicate balance in reviewing the contacts between the defendant, the forum and the litigation.

CONCLUSION

The Petitioner respectfully requests that this Court grant the Petition for a writ of certiorari.

Respectfully submitted,

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Norfolk, Virginia 23510

Counsel for Petitioner

APPENDIX

Before CRAVEN,* Circuit Judge; FIELD, Senior Circuit Judge, and THOMSEN,** Senior District Judge.

Stuart R. Gordon and Augustus Anninos (Howell, Anninos, Daugherty & Brown, on brief), for Appellant; A. Jackson Timms (Seawell, McCoy, Dalton, Hughes, Gore & Timms, on brief), for Appellees.

THOMSEN, Senior District Judge:

The question presented in this appeal is whether defendant shipowner was subject to service of process in a suit filed against it and its vessel[1] in the Eastern District of Virginia by a Greek seaman claiming damages for personal injuries sustained in an accident on board ship,

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* Judge Craven participated in the decision of this case following the argument and voted to affirm, but died before this opinion was prepared.

** Of the United States District Court for the District of Maryland, sitting by designation.

1/ The vessel left port before the suit was instituted and no process was ever served on it.

failure to treat, maintenance and wages due. Under Rule 4, F. R. Civ. P., service of process was made (1) on the Central American Steamship Agency, Inc., a New York agent for the shipowner, and the Secretary of the Commonwealth of Virginia, as statutory agent for Central, pursuant to §§ 8-81.2 and 81.3 of the Code of Virginia (the "Long Arm" statute), and (2) on the clerk of the State Corporation Commission, pursuant to § 8-60 of that Code. The district court granted the motion of the shipowner, appearing specially, to quash service of process and dismissed the action for lack of in personam jurisdiction.

On March 3, 1976, plaintiff, an experienced Greek seaman, signed in Greece an enlistment agreement, in accord with the Greek Union Agreements, for service as a boatswain on the M/V Olympic Pegasus; he joined the vessel in Italy the next day.

The vessel sails under a Liberian flag and is owned by defendant, a Panamanian corporation with no resident agent in Virginia and none of whose stockholders or officers is a United States citizen. She had sailed from Odessa, USSR, under a time charter to an agent of the USSR; on March 16, while at sea, she received orders to proceed to Norfolk to load cargo.

The Olympic Pegasus encountered rough seas on March 17, and plaintiff was injured on that date while attempting to secure cargo on deck. He was treated on board after the vessel had communicated with the United States Coast Guard and received medical advice. The vessel arrived in Norfolk on March 20 and plaintiff was transferred ashore to the United States Public Health Service Hospital. The vessel departed from Norfolk on March 28, after taking on a sizeable cargo of soybeans; plaintiff remained under

treatment in Norfolk until he was returned to Greece on June 18, 1976.

The asserted basis for service of process under §§ 8-81.2 and 81.3[2] was a wage claim by plaintiff. When a seaman leaves a vessel for medical treatment he must be paid all wages due him to the date he leaves the ship. 46 U.S.C. 596. Jurisdiction over a wage claim made in good faith under that section is mandatory, and if the court possesses jurisdiction over all other claims asserted. Dutta v. Clan Grahan, 528 F.2d 1258, 1260 (4 Cir. 1975); Elefterious v. Tanker Archontissa, 443 F.2d 185, 188 (4 Cir. 1971); Bekris v. Greek M/V Aristoteles, 437 F.2d 219, 220 (4 Cir. 1971). The district court found as a fact that plaintiff had not established

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2/ Subsection (a)(2) of § 8-81.2, relied upon by plaintiff to establish personal jurisdiction over defendant, provides:
"(a) A court may exercise personal

a good faith wage claim, and therefore quashed service of process because there was no cause of action within the meaning of § 8-81.2(a)(2).

Plaintiff conceded that he was paid most of his wages, but contended that an additional amount was due him for overtime work performed under an oral agreement with the chief mate. The district court carefully assessed the record, which contained ample evidence that plaintiff had been paid all wages due him to the date he left ship. The only evidence to support

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2/ (continued)

jurisdiction over a person, who acts directly or by an agent, as to a cause of action arising from the person's

" * * *

"(2) Contracting to supply services or things in this State * * *."

Section 8-81.3(a) provides that when the exercise of personal jurisdiction is authorized by § 81.2, process may be served, inter alia, on the Secretary of the Commonwealth of Virginia.

plaintiff's wage claim was his own testimony; he presented no record of the alleged agreement or of the wages alleged to be due under it. As the court concluded, to find that plaintiff was entitled to the wages he claimed would require a determination that, in addition to his regular working hours and three overtime hours per day, plaintiff had also worked ten more overtime hours each day he was on board ship. The district court's finding that plaintiff had not established a good faith wage claim is not clearly erroneous and must be affirmed. Rule 52(a), F. R. Civ.P.

Process was also served on defendant pursuant to § 8-60.[3] Jurisdiction under Section 8-60 has been extended to the

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3/ Section 8-60 provides in pertinent part:

"If a foreign corporation doing business in this State or a foreign corporation transacting affairs in this State has no

limits allowed by due process, see, e.g., Moore-McCormack Lines, Inc. v. Bunge Corp., 307 F.2d 910, 914 (4 Cir. 1962); Travelers Health Association v. Commonwealth, 188 Va. 877, 51 S.E. 2d 263 (1949), aff'd, 339 U.S. 643 (1950); the controlling standard is therefore the constitutional test of "minimum contacts".[4] The district court concluded that defendant's contacts with Virginia were not sufficient to sustain service of process under § 8-60.

3/ (Continued)

registered agent in this State, process or notice may be served on any agent of such corporation in the city or county in which he resides or in which his place of business is or on the clerk of the State Corporation Commission. Service, when duly made, shall constitute sufficient foundation for a personal judgment against such corporation when other requisites exist."

4/ See International Shoe Co. v. Washington, 326 U.S. 310 (1945); McGee v. International Life Insurance Co., 355 U.S. 220 (1957); Hanson v. Denckla, 357 U.S. 235 (1958).

Plaintiff is a Greek citizen whose only connection with Virginia was a three-month hospitalization in a federal hospital in Norfolk. His cause of action arose outside of Virginia and his injuries have no connection with any of defendant's activities in Virginia. Where a plaintiff is a stranger to the forum state and his injuries did not occur in the state or arise out of the foreign corporation's activities in the state, the contacts between the corporation and the forum state must be fairly substantial before in personam jurisdiction over the corporation may be imposed without offending the notions of fairness and justice inherent in due process. O'Neal v. Hicks Brokerage Co., 537 F.2d 1266, 1268 (4 Cir. 1976); Lee v. Walworth Valve Co., 482 F.2d 297, 299-300 (4 Cir. 1973); Ratliff v. Cooper Laboratories, Inc., 444 F.2d 745, 748 (4 Cir. 1971).

Defendant is a Panamanian corporation none of whose officers or stockholders is a United States citizen. Its sole contact with Virginia was the visit of the Olympic Pegasus to Norfolk between March 20 and 28, 1976. During that visit the vessel remained at anchor until March 26, when it began loading its cargo of soybeans before departure on the 28th. While in Norfolk, the vessel was assisted in and out of anchorage, took on water, was inspected by immigration and customs officials and by an insurance representative, had its propeller inspected, sent some crew members ashore for medical examinations and signed on one new crew member. These few activities deriving from a single visit of the vessel to Virginia do not amount to contacts sufficient to subject defendant to in personam jurisdiction in Virginia under Section 8-60 with respect to a non-resident's

cause of action arising outside of Virginia.

The judgment of the District Court is AFFIRMED.

F I L E D
Aug. 5, 1977
WILLIAM K. SLATE, II
Clerk

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 76-2387

George Grevas,

Appellant,

versus

Olympic Pegasus, M/V
her engines, boilers,
boats, tackle, apparel,
machinery, etc., in rem,
and Somerset Navigation Co.,
in personam,

Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Richard B. Kellam, District Judge.

The appellant's petition for rehearing and suggestion for rehearing en banc has been submitted to the court, a poll of the court was requested, and in the poll a majority of the judges eligible to vote, voted to deny rehearing en banc. Judge Widener voted to grant rehearing en banc.

The panel considered the petition for rehearing and is of the opinion that it should be denied.

It is accordingly adjudged and ordered that the petition for rehearing and suggestion for rehearing en banc is denied.

The Clerk is directed to send a certified copy of the order to West Publishing Company.

Entered at the direction of Judge Roszel C. Thomsen, U.S. District Judge for a panel consisting of Judge Field, and Judge Thomsen.

FOR THE COURT

/s/ William K. Slate, II

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

GEORGE GREVAS,	:	
Plaintiff,	:	
v.	:	CIVIL ACTION
M/V OLYMPIC PEGASUS, her engines, boilers, boats, tackle, apparel, machinery, etc., in rem,	:	NO. 76-232-N
and	:	
SOMERSET NAVIGATION CO., in personam,	:	
Defendants.	:	

MEMORANDUM ORDER

Plaintiff, a Greek seaman, was injured March 17, 1976, while in the performance of his duties as boatswain aboard the OLYMPIC PEGASUS when the ship encountered rough seas in the Atlantic Ocean about four days from Norfolk, Virginia. Upon arrival at Norfolk, plaintiff was transferred to the United States Public Health Service Hospital in Norfolk. After a period of hospitalization, he was repatriated to Greece, where he is now residing.

The injuries to plaintiff consisted of burns to the face, body, arms and legs from some type of caustic acid, said to be used generally for cleaning of storage tanks.

Process for defendant Somerset Navigation Company (Somerset) was served upon the Central American Steamship Agency, Inc. (Central), located in New York City, alleged to be an agent for Somerset, and served upon the Secretary of the Common-

wealth of Virginia, as statutory agent for Central, pursuant to Virginia Code 8-81.3. Somerset appeared specially and filed a motion to quash service of process and plea to the jurisdiction of this Court. Subsequently plaintiff had alias process issued and served on the Clerk of the State Corporation Commission as agent for Central alleged to be the statutory agent for Somerset. Similar motion to quash service of process and plea to the jurisdiction was filed as to service of the alias process.

Following the filing of the motion and plea and the scheduling of argument thereon, the Court postponed ruling to enable the parties to present such evidence as they deemed pertinent on the issues. The deposition of the plaintiff was taken and filed, and affidavits and exhibits were submitted for consideration on the motion

and plea. Counsel appeared and argued the issues orally.

I.

Plaintiff is a fifty-four year old Greek seaman who has been going to sea some twenty-seven years. On March 3, 1976, he signed an agreement of enlistment in Piraeus, Greece, for service aboard the OLYMPIC PEGASUS for an indefinite length of time. The owner of the vessel was Somerset Navigation Company Panama S.A., a Panamanian corporation, and it sailed under Liberian flag. The enlistment agreement was in accord with the Greek Union Agreements.[1]

1/ The Greek Collective Bargaining Agreement provided that any claims arising out of illness or accident would be governed by Greek Law, "being judged exclusively by . . . Greek Law Courts . . . ."

None of the stockholders or officers of Somerset are citizens or resident aliens of the United States. Somerset has no registered agent in Virginia. The OLYMPIC PEGASUS was the only vessel owned, operated or chartered by Somerset. At the time of the alleged injury the OLYMPIC PEGASUS was under time charter to Sovfracht as agents for the Union of Soviet Socialist Republics (U.S.S.R.).

The vessel left Odessa, U.S.S.R. in early March and on March 5th, while at sea, received word to change its course and head to Norfolk, Virginia. On March 17, the vessel encountered gale force winds and rough seas, requiring it to reduce its speed and change course. Plaintiff was injured about 9:30 a.m. of that day. At about 10:25 the vessel transmitted a medico message to the United States Coast Guard in Norfolk seeking medical advice for the plaintiff's burns. It

received a reply about 12:04 as to the treatment to be furnished.[2]

Weather conditions required the vessel to change course several times on its journey to Norfolk. It arrived at anchorage in Norfolk at about 0821 hours on March 20th. Plaintiff was transferred ashore at approximately 0930 hours and carried to the Public Health Hospital.

On March 20, 1976, the plaintiff's son, who was also a member of the crew of the vessel, demanded and received the full earnings of his father, which he signed for.

Plaintiff was employed at a monthly salary of £ 129.93 in accordance with the

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2/ It is stated that the Coast Guard does not attempt emergency at sea evacuations unless the United States Public Health Service Hospital recommends "immediate" evacuation, and when it recommends "evacuation as soon as possible" the Coast Guard will not attempt emergency at sea evacuations, and the vessel is to evacuate ashore as soon as the vessel arrives in port.

Greek Collective Bargaining Agreement. He was to receive a Sunday bonus pay of £ 14.29 per month, 11% of the monthly wage, plus an additional monthly bonus of £ 20.78, the total base pay being £ 165.00 monthly. It seems clear he was paid wages from March 3rd through March 20th, 18 days, in the amount of £ 99.00. He was guaranteed 3 hours overtime for each day worked while on board, and was paid a total of 39 hours - March 4th through March 16th. Actually, he worked some 29 hours overtime, for which he was paid, plus 39 hours guaranteed overtime, for a total of 68 overtime hours at the rate of £.54 per hour, or £ 36.72. He was paid a seniority bonus of £ 5.00 per month, prorated, or £ 2.83, and was paid the vacation pay with food allowance, etc. of £ 13.23, and the prorated share of the owner's voluntary bonus of £ 21.00. There is really no dispute concerning the payment to the plaintiff of the above sums.

(The evidence concerning the facts is hereafter set out.) However, plaintiff claims that there was due him an additional £ 50.00 to £ 60.00 for overtime work in cleaning the tanks aboard the ship. He says this arose out of a verbal agreement with the first mate, and that he had a record of the times when the work was performed and the exact amount due.

The vessel is a bulk carrier with six main tanks or holds and twelve topside or wing tanks. The personnel aboard consisted of six able-bodied seamen, two ordinary seamen, and the bosun, Grevas, aboard. During the period of plaintiff's employment aboard the vessel, the deck crew was paid for cleaning the vessel's six main tanks or holds at the rate of £ 28.00 per tank, as provided under the Bargaining Agreement, for a total of £ 168.00. The deck crew also washed the six main tanks or holds for which they were paid £ 5.00

per tank or £ 30.00, and they cleaned the 12 topside tanks at the rate of £ 6.00 per tank or £ 72.00. The total earnings were £ 270.00, or £ 30.00 for each of the nine men. Plaintiff was paid this £ 30.00. An additional sum of £ 2.33 was paid to plaintiff for carrying stores.

Plaintiff was due and entitled to sick seaman's wages. He has been paid $600.00, which appears to have been a sum in excess of what he was entitled to receive.

On the issue of jurisdiction, if there is a bona fide wage claim, asserted in good faith, it seems this Court has and must accept jurisdiction of that claim, and if it has and takes jurisdiction of that claim it should take jurisdiction of the other claims and dispose of the whole case. Dutta v. The Clan Graham, 528 F.2d 1258, 1260 (4th Cir. 1975); Bekris v. M/V ARISTOTELES, 437 F.2d 219, 220 (4th Cir. 1971).

Where a seaman leaves a ship because he is being hospitalized for medical treatment he should be paid wages to the date he leaves the ship. See 46 U.S.C. §§596-597; Norris, Law of Seamen (Third Edition) Vol. 1, §405, page 481; Elefteriou v. Tanker Archontissa, 443 F.2d 185, 188 (4th Cir. 1971). The question must therefore be decided as to whether the wage claim is a good faith wage claim.

When the issue of jurisdiction came before the Court on June 11th, the Court withheld ruling to permit the parties to submit such proof as they deemed pertinent on this issue. Defendant was directed to answer interrogatories going to the issue of jurisdiction. Interrogatories were answered, deposition of plaintiff has been filed, and affidavits have been submitted.[3]

3/ Following argument on September 3rd, defendants asked permission to submit additional affidavit. Plaintiff objected saying

Allegations of jurisdiction in the pleadings, when controverted, are without probative value, and when jurisdiction is challenged, the burden rests on the plaintiff to prove it. City of Kenosha v. Bruno, 412 U.S. 507, 514 (1973); Thomsen v. Gaskill, 315 U.S. 442, 446 (1942); Kvox, Inc. v. Associated Press, 299 U.S. 269, 277; McNutt v. General Motors Corp., 298 U.S. 178-187-9; Haynes v. James H. Carr, Inc., 427 F.2d 700 (4th Cir. 1970). We turn then to the evidence presented to establish jurisdiction. Eliminating the allegations in the pleading, as we must, the only evidence to support a wage claim is the testimony of plaintiff. There is no doubt he was paid $371.28, which was the amount due as shown by the wage account. His claim is that there was an additional

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3/ (Continued from App. 22) time for submitting proof on issue of jurisdiction had passed.

amount due him. He was asked by counsel:

> Q. Was that money that he gave you the total wages and benefits that were due and owing you on your discharge on March 20, the discharge from the vessel on March 20, 1976?
>
> A. I think they still owe me some money, but he did not bring me an itemized bill. (Tr. of ptf. deposition p.22)

Later he explained the sum due thusly, "It's about 50 or 60 pounds, or maybe more." (Tr. of ptf. deposition p. 56), which plaintiff claims is for overtime work done on the tanks. When asked for the record, he said he had it "someplace with my papers, but I don't remember where I put it." (Tr. p. 57). Later he said he was told by the Chief Mate to "do the work and I can give you this amount of money." (Tr. p. 58). He said he had nothing to verify his claim beyond the payroll record or account of wages, a copy of which is attached to the deposition.

The wage account shows plaintiff actually worked and was paid for 29 hours overtime, and in addition paid for 39 hours of overtime at the rate of three hours of overtime per day guaranteed by the Bargaining Agreement for the days when he did not otherwise work overtime, for a total of 68 hours overtime. Secondly, the 9 man crew was paid for cleaning the tanks the sum of 270 pounds, of which plaintiff's share was 30 pounds. He was paid and received that sum.

At the rate of pay for overtime specified in the contract of .54 of a pound per hour, he would have to work almost 120 hours of overtime to earn 60 pounds. This would mean that he would have worked the 120 hours in addition to the 68 hours overtime paid for, plus his regular working hours. Too, he was paid 30 pounds as his share of the joint work of the crew for cleaning the tanks.

The record just does not support a claim for any additional wages due plaintiff. Apparently he is confused about his overtime pay. With a provision in the Bargaining Agreement for overtime pay, and for pay for cleaning the tanks, it is not reasonable to find that the first mate agreed to pay plaintiff 50 to 60 pounds for overtime work within the period March 4 to the 17th. He was injured in the morning of the 17th, so we are really concerned with a period of some 12 days. To have earned the sum stated he would have worked 10 hours per day in addition to his regular working hours, plus the fact that he was paid the three hours minimum for the great majority of those days. He has failed to carry his burden of proving this claim.

While it seemed at argument the plaintiff agreed with the wage account statement, if not accepted as correct, there is no

evidence to contradict it. The account shows $371.28 due plaintiff was paid to his son on the day plaintiff was removed from the ship. Plaintiff says his son gave him around $300.00 and, at his direction, his son kept some of the money, but plaintiff does not know how much. The son signed showing he received $371.28. Although the matter was continued from June 11th until September 3rd, to permit the parties to submit proof of facts to support jurisdiction, no affidavit, statement or other evidence was presented from plaintiff, his son or anyone else to challenge the correctness of the payment of the $371.28. Nor was any evidence presented to support the claim of overtime allegedly due plaintiff for cleaning the tanks, save the indefinite statement of plaintiff. Plaintiff did not present the record of his overtime, which he said he had, nor was

any explanation made of a failure to present it.

The Court therefore finds that a good faith wage claim has not been established, a prerequisite to jurisdiction under this provision of law.

III

Secondly, plaintiff asserts there is jurisdiction under the claim for maintenance and for aggravation of injuries from failure to provide medical treatment and cure. This claim arises under general maritime law. Under the facts of this case, the omission, if any, occurred outside of Virginia, and personal jurisdiction may not be asserted under Virginia Code 8-81.2.[4] See Elefteriou v. Tanker Archontissa, supra (443 F.2d 188).

4/ There is no evidence of any aggravation from failure to treat, but if there was, the failure occurred outside of Virginia.

IV

We turn to the issue of "doing business", the only other basis for jurisdiction or which would justify the manner of serving process in this case.

Defendant's vessel came into Norfolk only on one occasion and that after the injury had been inflicted.

The Virginia Long Arm Statute is a one act statute. Kolbe v. Chromodern Chair Co., 211 Va. 736, 180 S.E.2d 664 (1971); Ajax Realty Corporation v. J. F. Zook, Inc., 493 F.2d 818 (4th Cir. 1972). But service of process on this question does not arise under the Virginia Long Arm Statute, 8-81.2. It arises under the "doing business" statute 8-60 of the Code of Virginia. International Shoe Co. v. State of Washington, 326 U.S. 310 (1945) fixed the standard for doing business as requiring certain "minimum contacts" to exist between the foreign corporation and the state. The question

here is whether one contact meets the test. No case has been cited to the Court to show that one contact is sufficient to meet the "minimal contact" test under §8-60. The Fourth Circuit has not passed on this question. Two cases from this Court have held one contact is sufficient. Pappas v. Steamship ARISTIDIS, 249 F.Supp. 692 (E.D. Va. 1965); Skarpelis v. M/T ARTHUR P., 302 F.Supp. 147 (E.D. Va. 1969). See also Raymond International, Inc., v. Microdot, Inc., C/a 177-73-N (E.D. Va.) and cases there cited.

Here plaintiff is a Greek seaman, signed on in Greece, is subject to the terms of a Greek Bargaining Agreement[5], the ship is owned by a Panamanian corporation, is

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5/ Where fixes jurisdiction in Greek courts. There is no evidence as to any unfairness in the Agreement. See The BREMAN, 407 U.S. 1, 12 (1972).

chartered to an agent of the U.S.S.R., the injury occurred on the high seas, the Jones Act is not applicable[6], and the plaintiff is now in Greece. Jurisdiction over suits between foreign seamen and foreign shipowners is discretionary. Dutta v. The Clam Graham, 528 F.2d 1258 (4th Cir. 1975). In exercising this discretion consideration must be given to the factors described in Lauritzen v. Larsen, 345 U.S. 571 (1953) and Hellenic Lines, Ltd. v. Rhoditis, 396 U.S. 306 (1975). That is, the place of the wrong, the law of the flag, the citizenship and domicile of the injured seaman, the place of contract of employment and its terms, inaccessibiilty of a foreign forum, the law of the forum, time elapsed since the time of injury and whether any recompense has been provided, the quality of

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6/ Hellenic Lines, Ltd. v. Rhoditis, 398 U.S. 306 (1970)

the ship's contact and any other pertinent factors. Weighing all of these factors, and even considering the service of process as valid, it would seem this Court ought to refuse to accept jurisdiction. As Judge Craven wrote in Ratliff v. Cooper Laboratories, Inc., 444 F.2d 745 (4th Cir. 1971), at page 746:

> Whether jurisdiction in the sense of power exists depends upon concepts of "fairness" and "convenience" and not upon mere compliance with procedural requirements of notice, nor even corporate "presence" within the state.

Continuing at page 748, Judge Craven wrote:

> Significant in the instant factual setting is the lack of a "rational nexus" between the forum state and the relevant facts surrounding the claim presented (citations omitted). If plaintiff's injury does not arise out of something done in the forum state, then other contacts between the corporation and the state must be fairly extensive before the burden of defending a suit there may be imposed upon it without offending traditional notions of fair play and substantial justice. (Citations omitted).

In the Ratliff case the Court went on to point out that the defendant's contacts with the State "although possibly sufficient to constitute 'presence' are nonetheless minimal."[7] The Court pointed out that the inquiry was limited to determining whether the facts "fall within those notions of due process, i.e., fairness and convenience, which would make it not unreasonable to require the defendant corporations to litigate far from home." Id. p. 747. That is, whether the activities of defendants were extensive enough in

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7/ The reference to Ratliff case also covers the case of Nichols v. Sterling Drug. In the Nichols case Sterling Drug had filed application and been granted authority to do business in South Carolina, and had appointed an agent for service of process; it maintained five "detail men" who live in South Carolina and promote its products through personal contacts with doctors and drugstores. Cooper Laboratories' activities in South Carolina were limited to solicitation by mail to dealers and wholesalers, and mailing of promotional

South Carolina to warrant in personam jurisdiction when plaintiffs were nonresidents and the cause of action arose out of the State.

While the action at bar is admiralty and reasons for assuming or taking jurisdiction are different from the average civil case, one of the prime issues here is the sufficiency of service of process. That is, where the plaintiff's injury does not arise out of something done in the forum state, is the test in the Ratliff case, i.e.,"other contacts between the Corporation and the State must be fairly extensive before the burden of defending

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7/ (Continued from App. 32) literature to about 650 doctors on its mailing list. Plaintiffs in those cases were not residents of South Carolina; had purchased and consumed drugs at other locations than South Carolina. Their interest in South Carolina was its statute of limitations period of 6 years.

a suit there may be imposed upon it without offending traditional notions of fair play and substantial justice" (444 F.2d 748) met by the one single contact. Contact here is clearly not "fairly extensive". If not sufficient to justify service of process under 8-60 of the Code of Virginia, the Court is without jurisdiction.

Considering all of the facts and circumstances of this case, the motion to quash service of process is granted, and the Court being without jurisdiction, the action is DISMISSED.

/s/ Richard B. Kellam
United States District Judge

Norfolk, Virginia
September 13, 1976.

CODE OF VIRGINIA, 1950, AS AMENDED

Section 8-60. How process served on foreign corporation on and after

had as aforesaid, then on affidavit of that fact an order of publication may be awarded as provided by Section 8-71 and Section 8-72. (Code 1919, Section 6064; 1956, c. 432.)